

HOUSE BILL 1438

By Lamar

AN ACT to amend Tennessee Code Annotated, Title 39
and Title 40, relative to expunction of certain
offenses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 40-32-101, is amended by deleting subdivisions (g)(1)(A),(B), and (D).

SECTION 2. Tennessee Code Annotated, Section 40-32-101(g)(1)(E), is amended by deleting the language "more than one (1) of the offenses listed in this subdivision (g)(1)" and substituting "more than one (1) of the offenses listed in this subdivision (g)(1) or an offense listed in this subdivision (g)(1) and an offense that is eligible for expunction pursuant to subsection (l)".

SECTION 3. Tennessee Code Annotated, Section 40-32-101, is amended by adding the following as a new subsection:

(l)

(1) A person who was convicted of a misdemeanor or Class C, D, or E felony that meets the requirements of this subsection (l) shall have the person's conviction automatically expunged without cost to the person upon:

(A) The discharge from custody by reason of service or expiration of the maximum sentence imposed by the court for the offense; or

(B) Being granted a certificate of final discharge from supervision by the director of probation and parole pursuant to § 40-28-609 , or any equivalent discharge by another state, the federal government, or county correction authority.

(2) Upon discharging a person who is eligible for expunction pursuant to this section from custody or granting a certificate of final discharge, the warden, sheriff, board of parole, or other correction authority shall notify the court that imposed the sentence that the person has completed the sentence.

(3) Upon receiving notice of completion of the person's sentence, the court shall determine whether the person's offense meets the requirements in subdivision (l)(5) for expunction. If the court finds that the offense meets the requirements, the court shall issue an order of expunction for the person's public records involving the criminal offense.

(4)

(A) The order of expunction entitles the person to have all public records of the expunged conviction destroyed in the manner set forth in this section.

(B) The expunction has the legal effect of restoring the person, in the contemplation of the law, to the same status occupied before the arrest, indictment, information, trial, and conviction. Once the expunction order is issued, no direct or indirect collateral consequences that are generally or specifically attendant to the person's conviction by any law shall be imposed or continued.

(C) A person with respect to whom an order has been granted under this subsection (l) shall not be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction in response to any inquiry made of the person for any purpose.

(D) Expunction under this subsection (l) means, in contemplation of law, the conviction for the expunged offense never occurred and the person shall not suffer any adverse effects or direct disabilities by virtue of the criminal offense that was expunged.

(E) Notwithstanding § 39-17-1307(b)(1)(B) and (c), a person whose offense is expunged pursuant to this subsection (l) and who is otherwise eligible under state or federal law to possess a firearm, shall be eligible to purchase a firearm pursuant to § 39-17-1316 and apply for and be granted an enhanced handgun carry permit pursuant to § 39-17-1351 or a concealed handgun carry permit pursuant to § 39-17-1366.

(F) The clerk of the court maintaining records expunged pursuant to this subsection (l) shall keep the records confidential. These records are not public and can only be used to enhance a sentence if the petitioner is subsequently charged and convicted of another crime. This confidential record is only accessible to the district attorney general, the defendant, the defendant's attorney, and the circuit or criminal court judge.

(5) In order for this subsection (l) to apply, the person must have been convicted of an offense:

(A) That was a misdemeanor or Class C, D, or E felony;

(B) That did not involve the use, attempted use, or threatened use of physical force against the person of another or the use or possession of a deadly weapon; and

(C) That is not a sexual offense or violent sexual offense, as defined in § 40-39-202.

SECTION 4. Tennessee Code Annotated, Section 40-32-101, is amended by deleting subsection (k).

SECTION 5. Tennessee Code Annotated, Section 40-32-105(b)(6)(C), is amended by deleting "§ 40-32-101(g)" and substituting instead "§ 40-32-101".

SECTION 6. A person who has completed a sentence, prior to July 1, 2021, for an offense that is eligible for expunction under this act may petition the court that imposed the sentence to have their offense expunged pursuant to this act at no cost to the person.

SECTION 7. This act takes effect July 1, 2021, the public welfare requiring it.